

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GENO R. SCHOTTE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, CA

*Docket No. 03-457; Submitted on the Record;
Issued May 2, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

On January 30, 2001 appellant, then a 55-year-old pipefitter, filed an occupational disease claim alleging that factors of employment caused headaches, loss of sleep, bitterness and depression.¹ In an accompanying statement, he alleged that, in December 1999, he was harassed by Rubin Anguiano concerning where appellant had parked an employing establishment truck; he disagreed with his supervisor Lee Hayes regarding the installation of a stove and he caught Mr. Hayes smoking in an employing establishment vehicle. Appellant alleged that he was pulled off jobs to assist plumbers; could not get the tools he wanted; that his truck was taken away and that he disagreed with supervisor Rex Lockridge regarding work methods. He stated that the employing establishment management was disrespectful because only one member attended a coworker's funeral and that a compliment regarding his work was not passed onto him. Appellant alleged that on June 19, 2001 he had a run-in with Mr. Anguiano, that Sherry Wiltz, a Human Resources Specialist, and Chaplain Marsh had created problems with the filing of his claim and that he had a difficult relationship with several of his supervisors.

Appellant submitted medical evidence, including reports from Dr. Ronald C. Hamm, who diagnosed an anxiety reaction.² By letter dated August 9, 2001, the Office informed appellant of additional evidence needed to support his claim.

By decision dated January 16, 2002, the Office denied the claim finding that appellant failed to establish that he sustained an injury in the performance of duty. On February 13, 2002 appellant requested a hearing that was held on August 13, 2002.

¹ The record indicates that the occupational disease claim was submitted to the Office of Workers' Compensation Programs on August 7, 2001.

² Dr. Hamm's credentials are unknown.

At the hearing, appellant testified that, even though he completed a claim form in January 2001, he did not pursue the claim but went to counseling instead. He stopped work on May 16, 2001, returned on August 2, 2001 and was still working. Following an incident in May 2001, he went to Chaplain Marsh to get help in filing a workers' compensation claim, but the paperwork was lost. Appellant alleged that Mr. Anguiano treated everyone like "a piece of scum" but that he had not filed a grievance or Equal Employment Opportunity claim. He stated that the parking incident occurred in December 2000, not December 1999 and that in May 2001 he "blew up" at Mr. Anguiano, who tried to tell appellant how to do his job. Appellant stated that he no longer sees a psychiatrist.

Subsequent to the hearing, the employing establishment submitted an August 22, 2002 statement from Ms. Wiltz, who denied losing appellant's original claim form, stating that appellant came to her office on four occasions inquiring about filing a claim. She advised that in June 2001 he inquired as to whether Chaplain Marsh had submitted a claim on his behalf and was informed that the chaplain had not. Ms. Wiltz stated that appellant did not submit a claim until July 31, 2001 and that later that day he requested it back and did not return it until August 2001, at which time the claim was processed. She further advised that she informed appellant of the type of evidence required to support a stress claim.

In a September 4, 2002 statement, Mr. Anguiano advised that he was supervisor of the minor improvement team at the time of both incidents described by appellant. Regarding the parking allegation, he stated that, after noting that appellant had illegally parked an employing establishment truck on the sidewalk near the emergency room entrance, he told appellant to move the truck. When appellant did not comply, Mr. Anguiano again asked him to move the truck. Appellant became angry. Mr. Anguiano then notified the employing establishment police and Mr. Lockridge, his supervisor. Regarding the May 2001 incident, when inspecting a job site where appellant was installing plumbing, Mr. Anguiano found appellant talking with another employee and noted that not much work had been completed since a prior inspection. He asked appellant if he had a problem, stating that he noticed the lack of progress. Appellant became angry. Mr. Anguiano then informed Mr. Lockridge about the incident and requested that appellant be removed from that particular job site. Mr. Lockridge complied and Mr. Anguiano informed appellant of this decision on the following day.

In a decision dated October 23, 2002, an Office hearing representative affirmed the January 16, 2002 decision. The instant appeal follows.

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury in the performance of duty.

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.³

³ Donna Faye Cardwell, 41 ECAB 730 (1990).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁴ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.⁵ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.⁶ When an employee experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.⁷

In the instant case, regarding appellant's allegation that he was unfairly treated and harassed by Mr. Anguiano in the December 2000 and May 2001 incidents, the Board finds that these allegations relate to administrative or personnel matters, unrelated to appellant's regular or specially assigned work duties and do not fall within the coverage of the Act.⁸ Although the handling of disciplinary actions, the assignment of work duties and the monitoring of activities at work are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.⁹ The Board has found, however, that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹⁰ The Board has held that an employee's dissatisfaction with perceived poor management constitutes frustration from not being permitted to work in a particular environment or to hold a particular position and is not compensable under the Act.¹¹ The Board finds that it was reasonable for Mr. Anguiano to request that appellant move an illegally parked truck from the area of the emergency room and to question his lack of progress on a plumber job. Appellant has provided no evidence to indicate that Mr. Anguiano acted in an abusive manner. Absent error and abuse, matters relating to the handling of a workers' compensation claim are administrative in nature and do not arise in the performance of duty.¹² Here again, appellant has provided insufficient evidence to substantiate his allegation

⁴ 28 ECAB 125 (1976).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

⁷ *Lillian Cutler*, *supra* note 4.

⁸ See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

⁹ *Id.*

¹⁰ See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

¹¹ See *Michael Thomas Plante*, 44 ECAB 510, 515 (1993).

¹² *Bettina M. Graf*, 47 ECAB 687 (1996).

that the employing establishment acted abusively in this regard. Appellant has therefore not established a compensable employment factor under the Act with respect to these administrative matters.

Appellant has also generally alleged that he was harassed and discriminated against by various employing establishment personnel. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹³ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁴ In the present case, appellant submitted insufficient evidence to support incidents he perceived as harassment and the employing establishment submitted statements which contradicted appellant's allegations. The Board therefore finds that appellant did not establish harassment and/or discrimination on the part of the employing establishment.

In conclusion, the Board finds that appellant has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty as alleged.¹⁵

The decisions of the Office of Workers' Compensation Programs dated October 23 and January 16, 2002 are hereby affirmed.

Dated, Washington, DC
May 2, 2003

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹⁴ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹⁵ As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496 (1992).